

REMARKS

The application has been reviewed in light of the Non-Final Office Action mailed November 29, 2004. At the time of the Non-Final Office Action, claims 1-18 were pending in this application. Prior to the issuance of the Non-Final Office Action, claims 1-25 were pending in the application. Claims 19-25 were withdrawn in response to Applicant's election without traverse to prosecute the invention of Group I, namely claims 1-18, which was made during a teleconference between Applicant's attorney, John Wustenberg, and the Examiner on November 29, 2004. Applicant hereby confirms its election of Group I as requested by the Examiner. In view of this election, the Applicant has amended the title of the invention to read "Method for Determining a Corrected Weight of a Batch Tank," which is more descriptive of the elected invention.

The Examiner rejected claims 1, 2, 4-11, 13-18 under 35 U.S.C. § 102(b) as being anticipated by Krueger (U.S. Patent 4,474,063) and objected to claims 3 and 12 as being dependent upon a rejected case claim, but indicated such claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The Applicant gratefully acknowledges the Examiner's indication of the allowability of claims 3 and 12. The Applicant, however, respectfully disagrees with the Examiner's rejection of the remaining claims, and therefore transposes his rejection of these claims as set forth immediately below.

Krueger discloses a load cell disposed in the bottom of storage tank that measures the weight of bulk material contained in the tank. The load cell has a flexible diaphragm. The weight of the bulk material is applied to the flexible diaphragm, which in turn moves downward away from a neutral no-load position under the weight of the bulk material applied to it. A

source of fluid under pressure is connected to a cavity in the load cell on a side of the diaphragm opposite the side that senses the weight of the bulk material. Fluid pressure is supplied to the cavity in an amount that causes the diaphragm to move to its neutral position, balancing the load applied to the diaphragm from the bulk material. A pressure gauge coupled to the cavity senses the fluid pressure required to balance the load. The pressure gauge is calibrated to read the height of the bulk material. Knowing the cross-sectional area of the tank and the density of the material, the weight of the bulk material can be calculated. In short, Krueger is directed to an apparatus and method for calculating the weight of a bulk material in a storage tank.

Krueger fails to teach or suggest, however, any mechanism or method for determining a corrected weight of a batching tank which takes into account the pressure in the tank, and therefore fails to anticipate the present invention as defined in the rejected pending claims. Turning specifically to the claims, Krueger fails to teach or suggest the step of “determining a corrected weight of the batching tank based on one of the second weights, one of the second pressures, one or more first weights, one or more first pressures, the density of the material being transferred to the batching tank, and the density of the fluid,” as required by independent claim 1. More specifically, Krueger fails to use the pressure in the batch tank in determining the corrected weighted of the tank. Rather, Krueger uses the pressure of a fluid in the load cell beneath the tank in calculating the weight of the material in the tank. Furthermore, Krueger fails to teach or suggest the step of “determining a corrected weight of the batching tank based on the second weight, the second pressure, one or more first weights, one or more first pressures, and one or more material properties,” as required by independent claim 10 for these same reasons. Therefore, independent claims 1 and 10, and claims 2, 4-11 and 13-18 dependent therefrom, are believed patentable over Krueger. Accordingly, the Examiner’s rejection of these claims as being anticipated by Krueger should be withdrawn.

SUMMARY

In light of the above amendments and remarks, Applicant respectfully submits that the application is now in condition for allowance and early notice of the same is earnestly solicited. Should the Examiner have any questions, comments or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record by telephone, facsimile or electronic mail, as indicated below.

Applicant believes that there are no fees due in association with the filing of this Response. However, should the Commissioner deem that any fees are due, including any fees for any extensions of time, Applicant respectfully requests that the Commissioner accept this as a Petition therefore, and directs that any fees be debited from Baker Botts L.L.P., Deposit Account No. 02-0383, (*formerly Baker & Botts, L.L.P.*) Order Number 063718.0379.

Respectfully submitted,

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Date: February 9, 2005

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